

REMARKS

Claims 35-62, 64, 67, and 68 are pending. Claims 1-34, 63, 65, and 66 have been cancelled. Claim 67-71 has been added.

Claim Rejections - 35 U.S.C. §112

Claim 59 has been rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. Specifically, the Examiner has objected to the limitation "soft" as used in Claim 59. Responsive to the Examiner's objection, the limitation "soft" has been deleted from Claim 59. Thus, Applicants respectfully request removal of the objection to Claim 59.

Claim 61 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Specifically, the Examiner objects to the phrase "in particular" in Claim 61 as rendering the claim indefinite. Responsive to the Examiner's objection, the phrase "in particular" has been deleted from Claim 61. Therefore, Applicants respectfully request the removal of the Examiner's objection to Claim 61.

Claim Rejections - 35 U.S.C. §102(b)

Claims 35-38, 40-54, 56, 57, 59, 60, and 64 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,665,089 to Dall ("Dall '089").

Dall '089 discloses the use of ladder plate 81, as shown in Fig. 8, in combination with ladder plate 82 for bracing complex fracture 83 with butterfly fragment 84. The end openings of ladder plate 81 contains single-screw fixation means 38, which are screwed to bone. Additionally, as described with reference to Fig. 2, a ladder plate, such as ladder plate 36, may be mounted to bone 30 and secured by cerclage cables 64 passing through holes 48. Each loop of cable 64 is pulled tight and locked in place by crimping respective bridges 42, as shown in Fig. 3.

Applicants respectfully submit that amended independent Claims 35, 54, and 60 are not anticipated by Dall '089, as Dall '089 fails to disclose each and every limitation called for in amended independent Claims 35, 54, and 60. Specifically, each of amended independent Claims 35, 54, and 60 call for an implant comprising a main plate adapted to be fixed to a bone and a plate-shaped outrigger element adapted to be fixed to the bone, wherein in the assembled state of the implant, the plate-shaped outrigger element is arranged offset from the main plate, the implant further comprising a flexible connection element, wherein the flexible connection

element connects the main plate and the outrigger element to treat a bone fracture, *the flexible connection element extending less than entirely around the periphery of the bone in the assembled state of the implant.*

In forming the rejection, the Examiner relies on cerclage wire 64 of Dall '089 as forming the flexible connection element called for in the amended independent claims. However, as shown in the figures of Dall '089, such as Fig. 2, cerclage wire 64 extends entirely around the periphery of the bone. Thus, Dall '089 fails to disclose a flexible connection element extending less than entirely around the periphery of the bone in the assembled state of the implant.

As set forth in paragraph [0028] of the current application as published, the main plate, outrigger element, and connection element do not form any "closed" structure in the implanted state which surrounds the bone around its full periphery, i.e., no "wrapping around" of the bone by the implant takes place. Rather, the bone is only "encompassed" by the implant over part of its periphery. Advantageously, the length of the connection element or the space in between the main plate and the outrigger can be dimensioned independent of the bone in question and the fracture to be treated, such as the main plate and the outrigger do not lie diametrically opposite one another on the bone. ¶ [0028].

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claims 35, 54, and 60, as well as Claims 36-38, 40-53, 56, 57, 59, and 64, which depend therefrom, are not anticipated by Dall '089.

Claim Rejections - 35 U.S.C. §103(a)

Claims 39, 58, 61, and 62 are rejected under 35 U.S.C. §103(a) as being obvious over Dall '089. In forming the rejection, the Examiner relies on Dall '089 as disclosing each and every limitation of amended independent Claim 35, from which Claims 39, 58, 61, and 62 depend. However, for the reasons set forth above with respect to amended independent Claim 35, Dall '089 fails to disclose or suggest each and every limitation called for in amended independent Claim 1. Specifically, Dall '089 fails to disclose or suggest an implant including a main plate to be affixed to a bone and a plate-shaped outrigger element adapted to be fixed to the bone, wherein the assembled state of the implant, the plate-shaped outrigger element is arranged offset from the main plate, the implant further including a flexible connection element, wherein the flexible connection element connects the main plate and the outrigger element to treat a bone

fracture, the flexible connection element extending less than entirely around the periphery of the bone in the assembled state of the implant.

Thus, for the reasons set forth above with respect to amended independent Claim 1, Applicants respectfully submit that Claims 39, 58, 61, and 62, which depend from amended independent Claim 35, are not obvious over Dall '089.

New Claims

New Claims 67 and 68 depend from amended independent Claim 35 and are patentable for at least the reasons set forth above with respect to amended independent Claim 35.

New Claim 69 is patentable in view of the prior art as the prior art fails to disclose or suggest an implant for the treatment of bone fractures, the implant including a main plate adapted to be fixed to a bone and a plate-shaped monolithic outrigger element adapted to be fixed to the bone, wherein, in an assembled state of the implant, the plate-shaped monolithic outrigger element is arranged offset from the main plate, the monolithic outrigger element including a flexible connection element, wherein the flexible connection element connects the main plate and the outrigger element to treat a bone fracture.

New Claims 70 and 71 depend from new independent Claim 69 and are patentable for at least the reasons set forth above with respect to new independent Claim 69.

Thus, for at least the foregoing reasons, Applicants respectfully request allowance of new Claims 67-71.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Application Serial No. 10/814,926
Amendment dated September 4, 2007
Reply to Office Action dated June 1, 2007

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs
Registration No. 55,814

Attorney for Applicants

MBS/nw

BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

Enc. Return Postcard

CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: September 4, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative



Signature

September 4, 2007

Date